Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 009366

42
ORIGIN EB-11

INFO OCT-01 EUR-25 IO-14 ISO-00 L-03 AGR-20 STR-08 COME-00

TRSE-00 AID-20 CEA-02 CIAE-00 EA-11 FRB-02 INR-10

NEA-10 NSAE-00 RSC-01 OPIC-12 SPC-03 CIEP-02 LAB-06

SIL-01 OMB-01 DODE-00 H-03 INT-08 NSC-10 PA-04 SS-20

TAR-02 USIA-15 PRS-01 FEA-02 /228 R

DRAFTED BY EB/OT/TA:THGEWECKE:JMN
APPROVED BY EB/OT/TA:JWHOLMES
L/EB - DBURNS
EUR/CAN - DKRUSE
AGRIC - DWANAMAKER
STR - HWILLIAMS
COMM - DSCHLECHTY (INFO)
TREAS - WBARREDA (INFO)
---------- 115650
R 161308Z JAN 74
FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA
INFO ALL OECD CAPITALS
USMISSION GENEVA

LIMITED OFFICIAL USE STATE 009366

E.O. 11652: N/A
TAGS: GATT, ETRD, CA
SUBJECT: U.S. AND CANADIAN INTERPRETATIONS OF ARTICLE XIX.

1. ON JANUARY 3, CANADIAN ASSISTANT DEPUTY MINISTER OF FINANCE RODNEY GREY AND DEPUTY ASSISTANT SECRETARY RENNER HAD AN EXCHANGE OF VIEWS ON GATT ARTICLE XIX.

2. GREY SAID THAT, IN CANADIAN VIEW, INVOCATION OF ARTICLE XIX MODIFIES GAT CONCESSIONS AND IF CRITERIA STATED XIX:1
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 009366

ARE MET, NO COMPENSATION IS DUE AFFECTED PARTIES. CANADA

INTERPRETS PHRASE "AGREEMENT WITH RESPECT TO THE ACTION" IN TEXT ARTICLE XIX 3(A) TO REFER TO AGREEMENT ABOUT WHETHER IMPORT RELIEF ACTION ACTUALLY JUSTIFIED UNDER ARTICLE XIX:1. WHERE CRITERIA CLEARLY NOT MET, AFFECTED PARTIES WOULD BE DUE COMPENSATION. GREY SAID SINCE WHETHER CRITERIA OF ARTICLE XIX:1 ACTUALLY MET IS DISPUTABLE IN MOST CASES, CANADA HAD IN PRACTICE USUALLY AGREED TO COMPENSATION. GREY SAID CANADIAN MINISTERS ARE MORE SENSITIVE TO CHARGES OF FAILING TO MEET INTERNATIONAL OBLIGATIONS THAN TO THREAT OF HAVING TO PAY FOR ACTIONS, SINCE COMPENSATION IS SELDOM PAINFUL GIVEN VARIED NATURE U.S.-CANADIAN TRADE.

WHERE IMPORTING COUNTRY GETS BENEFIT OF DOUBT IN INVOKING ARTICLE XIX AND EXPORTER CAN CLAIM COMPENSATION FLOWING FROM RIGHT TO RETALIATE, AMPLY SERVES INTERESTS OF U.S. AND OTHER LARGE COUNTRIES BUT NOT THAT OF CANADA AND SMALLER COUNTRIES. FOR LATTER RIGHT TO RETALIATE IS OF LIMITED VALUE AND THEIR INTERESTS ARE BETTER SERVED BY EMPHASIS ON INTERNATIONAL OBLIGATIONS. HE SAID IF U.S. VIEW PREVAILS, CANADA MIGHT TRY TO CHANGE ARTICLE XIX, ALTHOUGH AS PRACTICAL MATTER CANADA WILL PROBABLY OFFER COMPENSATION IN MOST CASES. GREY NOTED U.S. ESCAPE CLAUSE ACTIONS USUALLY LASTED FOR MORE YEARS THAN CANADA'S LASTED IN MONTHS, AND SAID HE FELT U.S. AND CANADA SHOULD BE ABLE TO FIND BETTER MECHANISM TO SOLVE BORDER TRADE PROBLEMS THAN PERIODIC INVOCATION ARTICLE XIX AND PAYMENT OF COMPENSATION. HE SUGGESTED WE LOOK AT EUROPEAN EXPERIENCE IN COPING WITH WHAT MUST BE SIMILAR PROBLEMS.

4. RENNER STRESSED THAT THE U.S. INTERPRETATION OF GATT ARTICLE XIX DIFFERED SHARPLY FROM CANADA'S WITH RESPECT TO THE RIGHTS AND OBLIGATIONS OF BOTH EXPORTERS AND IMPORTERS.

5. IN THE U.S. VIEW ARTICLE XIX PERMITS AN IMPORTING COUNTRY TO IMPOSE TEMPORARY IMPORT RELIEF MEASURES WHEN IT DETERMINES HAT IMPORTS HAVE INJURED OR THREATEN TO INJURE DOMESTIC INDUSTRIES OR WORKERS. U.S. DETERMINATIONS ARE BASED ON U.S. LEGISLATION WHOSE PROVISIONS ARE CONSISTENT WITH ARTICLE XIX.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

6. WITH RESPECT TO THE RIGHTS OF EXPORTING COUNTRIES FACED WITH IMPORT RELIEF MEASURES BY OTHER COUNTRIES, RENNER MADE THE FOLLOWING POINTS: WHEN AN IMPORTING COUNTRY HAS IMPOSED IMPORT RELIEF MEASURES, ARTICLE XIX PROVIDES THAT IF AGREEMENT IS NOT REACHED BETWEEN THE EXPORTING AND IMPORTING COUNTRIES, THE EXPORTING COUNTRY MAY RETALIATE. ARTICLE XIX DOES NOT INDICATE WHAT THE AGREEMENT SHOULD RELATE TO. THUS, IT IS UP TO THE PARTIES

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

INVOLVED TO DEFINE WHAT CONSTITUTES AGREEMENT. THE U.S. CONSIDERS COMPENSATION TO BE AN ESSENTIAL ELEMENT OF AGREEMENT. FURTHERMORE, MOST EXPORTING COUNTRIES IN THIS SITUATION PREFER TO REACH AGREEMENT ON COMPENSATORY CONCESSIONS RATHER THAN RETALIATE SO THAT TRADE WILL BE PROMOTED AND NOT FURTHER RESTRICTED. RENNER NOTED U.S. PRACTICE SHOWED CONSISTENT ADHERENCE TO THIS PRINCIPLE: IN 17 U.S. ESCAPE CLAUSE ACTIONS SINCE 1950, U.S. HAD PROVIDED COMPENSATION OR SUFFERED WITHDRAWALS IN 15

CASES, WHILE IN OTHER TWO CASES, OUR RECORDS SHOWED NO

COMPENSATION HAD BEEN FORMALLY REQUESTED AND NO RETALIATION TAKEN. RENNER ALSO NOTED IN SEVEN CASES INVOLVING CANADIAN ARTICLE XIX ACTIONS SINCE 1960, THE US HAD RECEIVED COMPENSATION FOUR TIMES AND IN THE OTHER THREE CASES, ALL PRIOR TO 1967, THE U.S. HAD NOT REQUESTED IT. IN SUM, LANGUAGE, LOGIC, AND HISTORY SUPPORTED US VIEW THAT COMPENSATION WAS DUE AFFECTED PARTIES IN ARTICLE XIX CASES. RENNER ADMITTED USG HAD RECENTLY LACKED AUTHORITY TO PROVIDE COMPENSATION, BUT EFFORTS WERE BEING MADE TO CORRECT THIS SITUATION; PERMANENT COMPENSATION AUTHORITY WAS PROVIDED FOR IN THE TRADE BILL.

7. IN RESPONSE TO VARIOUS ISSUES RAISED BY GREY, RENNER MADE THE FOLLOWING OBSERVATIONS:

(A) ALTHOUGH THE U.S. HAD SUGGESTED THAT A NEW OPTION BE CREATED UNDER ARTICLE XIX PROVIDING THAT COMPENSATION WOULD NOT BE REQUIRED AND RETALIATION NOT PERMITTED IN CASES WHERE AN IMPORTING COUNTRY IMPOSING IMPORT RELIEF MEASURES OBTAINED INTERNATIONAL APPROVAL AND ALTHOUGH LIMITED OFFICIAL USE

THERE APPEARS TO BE SOME MEASURE OF AN INTERNATIONAL CONSENSUS FAVORING SUCH AN ADDITIONAL OPTION, INTERNATIONAL AGREEMENT HAD NOT YET BEEN REACHED. UNTIL THEN, GATT MEMBERS SHOULD OPERATE ON BASIS OF THE PRESENT ARTICLE XIX ALONE.

(B) U.S. ARTICLE XIX POLICY WAS SAME FOR ALL COUNTRIES AND U.S. COULD NOT ADOPT A SPECIAL ATTITUDE TOWARD CANADA.

(C) U.S. FOUND THE CANADIAN IDEA THAT BINDINGS COULD BE BROKEN WITHOUT JUSTIFICATION UNDER ANY ARTICLE OF GATT, AS GOC WAS MAINTAINING IN BEEF CASE, STRANGE AND UNACCEPTABLE. GATT PROVIDED SPECIFIC WAYS TO BREAK BINDINGS, NAMELY ARTICLES 19 AND 28, AND IT WAS HARD FOR US TO

CONCEIVE OF TARIFF ACTIONS THAT WOULD NOT COME UNDER ONE OF THESE.

(D) THE U.S. RECOGNIZED CANADIAN ACTIONS FREQUENTLY WERE OF SHORT DURATION, BUT DID NOT CONSIDER THEM TO BE LESS HARMFUL BECAUSE OF THAT. CANADIAN ACTIONS ON AGRICULTURAL COMMODITIES SOMETIMES ENCOMPASSED NEARLY THE ENTIRE TRADE FOR A PARTICULAR MARKETING PERIOD AND SEVERELY CURTAILED CERTAINTY OF MARKET ACCESS FOR U.S. EXPORTERS.

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TRADE, TARIFFS, REPRISALS, EXPORTERS
Control Number: n/a
Copy: SINGLE
Draft Date: 16 JAN 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE009366
Document Source: CORE
Document Unique ID: 00
Drafter: THGEWECKE:JMN
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740137/aaaabjbe.tel
Line Count: 178
Locator: TEXT ON-LINE
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 11 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <11 APR 2002 by boyleja>; APPROVED <28 MAY 2002 by morefirh>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: U.S. AND CANADIAN INTERPRETATIONS OF ARTICLE XIX.
TAGS: ETRD, CA, GATT
To: OTTAWA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005